

[Order filed 4-19-07]

IN THE IOWA DISTRICT COURT IN AND FOR WEBSTER COUNTY

FILED
2007 APR 19 PM 2:45
CLERK OF DISTRICT COURT
WEBSTER COUNTY, IOWASTATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

DENNIS DE VRIES d/b/a ELK CREEK TILING,

Defendant.

LAW NO.

CV CV 312319

CONSENT ORDER,
JUDGMENT AND DECREE

NOW on this 19th day of APRIL, 2007, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6(1)(a) and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant Dennis De Vries d/b/a Elk Creek Tiling admits the violations alleged in the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Dennis De Vries d/b/a Elk Creek Tiling is assessed a civil penalty of Seven Thousand Dollars (\$7,000.00) for the violations alleged in the petition. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid

balance. Payments of the civil penalty and interest shall be made payable to the State of Iowa and submitted to plaintiff's attorney, David R. Sheridan, at the address noted below.

2. Defendant Dennis De Vries d/b/a Elk Creek Tiling, its officers, employees, agents, successors and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from commencing any excavation in the State of Iowa, except during an emergency pursuant to Iowa Code section 480.4(6), without first contacting the statewide notification center (1-800-292-8989) at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoined from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

4. The costs of this action are taxed to the defendant in the amount of \$ _____

(Clerk to enter).


JUDGE, Second Judicial District of Iowa

Approved as to form:

THOMAS J. MILLER
Attorney General of Iowa



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DEFENDANT

[Lawsuit petition filed 4/18/07]

IN THE IOWA DISTRICT COURT IN AND FOR WEBSTER COUNTY

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

DENNIS DE VRIES d/b/a ELK CREEK TILING,

Defendant.

LAW NO. CVCV312319

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Dennis De Vries d/b/a Elk Creek Tiling states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Dennis De Vries d/b/a Elk Creek Tiling for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, and proceeded with the excavations without any underground facilities having been located and marked. The defendant excavated in the vicinity of three natural gas pipelines, missing one by only 20 feet and hitting another causing a leak of natural gas and property damage.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant Dennis De Vries, in partnership with Rick Blom, owns and operates a drainage tiling business known as Elk Creek Tiling and located at 11423 Hwy T 14 South, Reasnor, Iowa 50232.

Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits,

cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.” Iowa Code § 480.1(10).

Jurisdiction

10. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location outside a city shall include:

1. the name of the county, township, range and section;
2. the name and address of the excavator;
3. the excavator’s telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and

8. if known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

16. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

17. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

18. On or about December 27, 2006, Dennis De Vries d/b/a Elk Creek Tiling was conducting a tiling operation in the SE 1/4 of Section 33, Township 87 North, Range 28 West in rural Webster County, Iowa. Dennis De Vries d/b/a Elk Creek Tiling did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, Dennis De Vries d/b/a Elk Creek Tiling proceeded with the excavation without any underground facilities having been located and marked on the property.

19. Northern Natural Gas (NNG) owns and operates three underground natural gas pipelines which run parallel to each other east to west across the SE 1/4 of Section 33, Township 87 North, Range 28 West in rural Webster County, Iowa. NNG Pipeline A is 4-inches in diameter, while NNG Pipelines B and J are each 8-inches in diameter. All three carried natural gas under at least 367 pounds per square inch (psig) of pressure. The buried pipelines provide natural gas service to several cities: Callendar, Farnhamville, Gowrie, Harcourt, Lake City, Lohrville, Manson, Rockwell City, and Twin Lakes, as well as Frontier Ethanol and thirteen farm tap customers. Natural gas is an explosive and highly flammable substance.

20. During the excavation on December 27, 2006, at approximately 2:30 p.m., Dennis De Vries d/b/a Elk Creek Tiling's tiling equipment and/or backhoe hit and cracked NNG Pipeline A causing a leak of natural gas and property damage. In addition, the cracked natural gas pipeline resulted in temporary loss of natural gas service to farm tap customers during repairs which were completed by NNG on December 28, 2006, at approximately 7:30 p.m. The

excavation missed NNG Pipeline B by only 20 feet and NNG Pipeline J by approximately 300 feet.

21. Installation of buried tiling constitutes "excavation" as defined in Iowa Code section 480.1(4).

22. At all material times hereto, Dennis De Vries d/b/a Elk Creek Tiling was an "excavator" as defined in Iowa Code section 480.1(5).

23. A buried natural gas pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

24. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt Dennis De Vries d/b/a Elk Creek Tiling from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

Violations

25. On or about December 27, 2006, Defendant Dennis De Vries d/b/a Elk Creek Tiling engaged in excavations in the SE 1/4 of Section 33, Township 87 North, Range 28 West in rural Webster County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Dennis De Vries d/b/a Elk Creek Tiling pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. issue a permanent injunction enjoining Defendant Dennis De Vries d/b/a Elk Creek Tiling from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



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